

REMARKS

1. The Examiner rejected Claims 1-20 under 35 U.S.C. §102(e) in light of U.S. Patent 6,536,659 to Hauser (hereafter “the ‘659 Patent”). However, the invention claimed in the present application predates the issue date of the ‘659 Patent precluding the use of this reference as prior art under §102(e).
2. The Examiner required a new Abstract to be submitted.

I. THE INVENTION PREDATES THE FILING DATE FOR THE '659 PATENT

The Examiner relied on the '659 Patent to support his rejection 35 U.S.C. §

102(e). 35 U.S.C. §102(e) provides the following:

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

If an Applicant can show that the claimed invention predates the filing date of a cited art issued United States patent, then that patent cannot be used to support a 35 U.S.C. §102(e) rejection.

The invention predates the filing date for the '659 Patent, which is November 15, 2000. Because the date of the invention for the claimed invention was prior to the filing date of the '659 Patent, the '659 Patent cannot be considered prior art under 35 U.S.C. §102(e) against the claimed invention.

The conception date for the invention is no later than June 2000, which is the latest possible conception for the subject matter of the present application. *O'Connell Declaration*, ¶ 4, p. 2. Between June 2000 and July 2003, Mr. O'Connell worked diligently to reduce the invention to actual practice by demonstrating actual operation of essential claim elements of the invention. Actual reduction to practice of claimed aspects of the invention occurred no later than February 2002. *O'Connell Declaration*, ¶ 4, p. 2. Mr. O'Connell continued reducing the invention to practice other aspects of the claimed invention until the filing date of July 7, 2003. *O'Connell Declaration*, ¶ 4, p. 2. The invention was constructively reduced to practice no later than the July 7, 2003 filing date. *O'Connell Declaration*, ¶ 4, p. 2.

Apart from the inapplicability of 35 U.S.C. §102(e), there are substantive differences between the subject matter in the claimed invention and the subject matter claimed in the '659 Patent. Because the invention date for the application was prior to the November 15, 2000 filing date for the '659 Patent, the Applicant believes that the 35 U.S.C. §102(e) rejection has been traversed. *See* 37 C.F.R. §1.131(b) and MPEP § 2136.

II. EXTENSION OF TIME REQUEST

The Applicant requires a two month extension of time to respond to the office action. Applicant hereby encloses the required fee of \$225.00. No additional fees are believed necessary for this filing. If additional fees are required for this filing or a credit is due, please deduct or credit the appropriate fees to D. Scott Hemingway's Deposit Account No. 501,270.

III. CONCLUSION

The conception and reduction to practice dates of the claimed invention predate the filing date of the '659 Patent. Accordingly, the Examiner's 35 U.S.C. §102(e) rejection should be traversed. It is also believed that the revised Abstract is acceptable. Reconsideration of the application is requested in light of this response.

Respectfully submitted,



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